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EXAMINER

D'ANIELLO, NICHOLAS P

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SIMON RICHARD STEBBING,
ALEXIS J. TOFT, and STEPHEN GEORGE ELLISON

Appeal 2009-011768
Application 10/533,314
Technology Center 1700

Before CHUNG K. PAK, LINDA M. GAUDETTE, and MARK NAGUMO,
Administrative Patent Judges.

NAGUMO, *Administrative Patent Judge.*

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

A. Introduction²

Simon Richard Stebbing, Alexis J. Toft, and Stephen George Ellison (“Stebbing”) timely appeal under 35 U.S.C. § 134(a) from the final rejection³ of claims 1-12. We have jurisdiction under 35 U.S.C. § 6. We AFFIRM.

The subject matter on appeal relates to an aqueous slurry comprising a metal-substituted zeolite and a particulate silica having a specified BET surface area and pore volume. The slurries are said to have controlled rheological properties (Spec. 1, ll. 3-4), an approximately neutral pH and to be useful in the manufacture of paper (*id.* at 3, ll. 9-11). In particular, the slurries are said to be stable against settling, but to be readily discharged from a vessel (*id.* at 1, ll. 14-16), unlike prior art slurries, which are said to be lightly gelled (*id.* at ll. 8-12). Accordingly, the slurries are said to be readily transported in bulk.

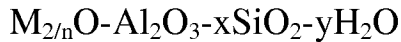
² Application 10/533,314, *Stabilised Aluminosilicate Slurries*, filed 29 April 2005 as the National Stage of an international application filed 22 October 2003, based on a British application filed 30 October 2002. The specification is referred to as the “314 Specification,” and is cited as “Spec.” The real party in interest is listed as Ineos Silicas Ltd. (Appeal Brief, filed 26 January 2009 (“Br.”), 3.)

³ Office action mailed 25 June 2008 (“Final Rejection”; cited as “FR”).

Representative Claim 1 reads:

1. An aqueous slurry comprising

(a) a crystalline aluminosilicate represented by the empirical formula



wherein

M represents a first metal moiety, said first metal having a valency of n,

x indicates the ratio of molecules of silica to molecules of alumina and

y indicates the ratio of molecules of water to molecules of alumina,

(b) a salt of a second metal selected from the group consisting of Group III metals, metallic elements of Group IV, magnesium, titanium, chromium, iron, nickel, copper, zinc, zirconium and silver, said salt of a second metal being present in an amount which is sufficient to replace from about 2.0 to about 40 per cent by weight of the first metal moiety,

and

(c) particulate silica having a BET surface area greater than 500 m²/g and a pore volume, as measured by nitrogen manometry of less than 2.1 cm³/g.

(Br., Claims App. A-1, indentation and paragraphing added.)

The Examiner has maintained the following ground of rejection:⁴

Claims 1-12 stand rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Araya,⁵ Swift,⁶ and Aldcroft.⁷

⁴ Examiner's Answer mailed 12 March 2009. ("Ans.")

⁵ Abraham Araya, *Zeolite Compositions and Their Use*, WO 01/94512 A1 (13 December 2001).

B. Discussion

Findings of fact throughout this Opinion are supported by a preponderance of the evidence of record.

We observe first that Stebbing presents arguments only for the patentability of claim 1, the sole independent claim. All claims therefore stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii)(2010).

Stebbing argues that the Examiner “misapplied” Swift and Aldcroft in a failed attempt to demonstrate that it would have been obvious to add particulate silicates having the required BET surface area and pore volume to the zeolite compositions taught by Araya. (Br. 10-15.) The difference between the claimed invention—an aqueous slurry—and the invention described by Swift, which Stebbing characterizes as a detergent composition comprising solid agglomerates (*id.* at 10, 3d. para., last sentence) highlights, in Stebbing’s view, the hindsight character of the Examiner’s rejection. There is, according to Stebbing, no motivation in Swift to modify the viscosity of concentrated liquid aqueous aluminosilicate slurries, which is the problem solved by the claimed invention. (*Id.* at 13, last two paras.) Similarly, Stebbing argues, Aldcroft does not teach that “the silica mentioned therein would have any effect on the viscosity of concentrated zeolite slurries.” (*Id.* at 14, 3d full para.) Stebbing notes that “the powder

⁶ Ronald A. Swift and Eugene J. Pancheri, *Detergent Composition Containing Optimum Levels of Amine Oxide and Linear Alkylbenzene Sulfonate Surfactants for Improved Solubility in Cold Temperature Laundering Solutions*, U.S. Patent 5,478,500 (1995).

⁷ Derek Aldcroft et al., *Granular Compositions*, WO 00/12669 (9 March 2000).

granules of Aldcroft are ultimately intended to be dispersed in water as part of a washing composition.” (*Id.*) But, Stebbing continues, “such a composition would be a very dilute slurry, and so of no relevance to the present invention.” (*Id.*)

Stebbing overlooks two critical points. First, claim 1 (indeed, each of the claims) is not limited to slurries of any particular dilution. Thus, claim 1 reads on any aqueous slurry that contains at least the recited components. Due to the transitional term “comprising,” additional components may also be present. Second, each reference—Araya (assigned to Ineos Silicas Ltd., the real party in interest in this appeal), Swift, and Aldcroft—is concerned with aqueous slurries of zeolite-based detergents as an ultimate (or, perhaps more accurately, a penultimate) use of the respective disclosed invention. (*See, e.g.*, the abstracts of each document.)

The reason for combining the teachings need not be the same as the reason Applicants combine the critical ingredients. *In re Beattie*, 974 F.2d 1309, 1312 (Fed. Cir. 1992) (“[a]s long as some motivation or suggestion to combine the references is provided by the prior art taken as a whole, the law does not require that the references be combined for the reasons contemplated by the inventor.”) Here, the common ultimate use as an aqueous detergent composition provides a proper motivation to combine the teachings of the references. Thus, as the Examiner argues, a person having ordinary skill in the art would have expected, reasonably, to be able to prepare detergents based on the zeolites taught by Araya, using the process taught by Swift, in which the silicas taught by Aldcroft are used as a flow aid in the final step of mixing and coating the dried agglomerates of

surfactants and powders. In use, the detergent composition taught by each reference is added to water, forming a slurry, since not all of the components are soluble in water. Thus, the ultimate slurry would have been prima facie obvious in view of the references. Stebbing has not shown harmful error in the Examiner's reasoning.

The evidence of the "surprising and unexpected result" of storage stability and reduced viscosity shown in Table 2 of the 314 Specification (Br. 11-12) is not commensurate in scope with the claimed subject matter, which, as noted *supra*, is not limited as to the degree of dilution of the slurry. Accordingly, the prima facie case of obviousness has not been rebutted.

C. Order

We AFFIRM the rejection of claims 1-12 stand rejected under 35 U.S.C. § 103(a) in view of the combined teachings of Araya, Swift, and Aldcroft.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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